

The complaint

Mr G has complained that HSBC UK Bank Plc (“HSBC”) acted unfairly by continuing to apply charges to his account when he was in financial difficulty.

What happened

Mr G held an account with HSBC with an overdraft facility.

Mr G complained to HSBC that it acted unfairly by continuing to charge interest on his overdraft when it was clearly unaffordable. Mr G is also unhappy about HSBC’s charging structure as this has resulted in the cost of his overdraft increasing.

HSBC said all charges were applied to Mr G’s account correctly in line with the terms and conditions of the account.

Mr G was dis-satisfied with this and brought his complaint to this service.

HSBC has not consented to us looking at Mr G’s complaint prior to August 2016. So on this basis this service has only looked at the merits of Mr G’s complaint from August 2016.

One of our adjudicators looked at this complaint and thought that HSBC acted unfairly when it continued charging overdraft fees from 1 August 2016 to 31 August 2018 as Mr G’s statements showed that Mr G’s use of his overdraft was unsustainable.

Our adjudicator thought HSBC should put things right by:

- Re-working Mr G’s current overdraft balance so that all interest, fees and charges applied to it from 1 August 2016 to 31 August 2018 are removed.

AND

- If an outstanding balance remains on the overdraft once these adjustments have been made HSBC should contact Mr G to arrange a suitable repayment plan for this. If it considers it appropriate to record negative information on Mr G’s credit file, it should backdate this to August 2016.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr G, along with 8% simple interest on the overpayments from the date they were made (if they were) until the date of settlement. If no outstanding balance remains after all adjustments have been made, then HSBC should remove any adverse information from Mr G’s credit file.

HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Mr G a certificate showing how much tax it’s taken off if she asks for one.

HSBC agreed to settle Mr G’s complaint in-line with our adjudicator’s recommendations.

Mr G doesn't wish to accept this – he believes interest should be paid on the amount of the charges HSBC refunded and wants interest frozen from when he raised his complaint, and has asked for an ombudsman's decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Having carefully considered everything, I think that what HSBC has already agreed to do to put things right for Mr G is fair and reasonable in all the circumstances of this complaint. I'll explain why I think this is the case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have.

So where a business increases or continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit. This means we'd normally expect a lender to refund the interest and charges added to any credit from the point the lender ought to have realised it was unsustainable. And if those interest and charges were paid also add 8% simple interest per year.

I understand that Mr G would like HSBC to pay interest on the amount of charges HSBC has offered to refund, but to do this would be to penalise HSBC for its mistake and that is not our approach. So I will not be asking HSBC to do this.

In this case after reviewing Mr G's statements, I'm in agreement with our adjudicator that from August 2016 to August 2018 when his overdraft was paid off it was evident Mr G wasn't managing his overdraft in a sustainable way. Mr G wasn't able to see or maintain a credit balance for a reasonable period of time and his statements show numerous transactions for gambling and payday loans. If HSBC had carried out a proper review of his statement's I think it ought to have realised it was unlikely Mr G would be able to sustainably repay the overdraft within a reasonable period of time.

HSBC has agreed to settle Mr G complaint in-line with this finding and Mr G will be 'refunded' all of the interest, fees and charges caused by the overdraft facility. I understand Mr G would like a refund of interest and charges since he raised his complaint in August 2022. But having looked at Mr G's statements I can't say there have been signs of financial difficulty since he paid off his overdraft in September 2018.

Indeed, Mr G was barely using his overdraft until February 2022 when he then withdrew funds to the top of his limit and then besides paying the overdraft charges, appears to have stopped using the account. I accept Mr G may well be unhappy about HSBC's charging structure for use of the overdraft, but HSBC has provided an overdraft facility for Mr G who has used and benefitted from the funds and it is entitled to charge for this. Ultimately, how much a bank charges for services is a commercial decision. And it isn't something for me to get involved with.

So bearing in mind all of this, I'm satisfied that what HSBC has already agreed to do to put things right for Mr G is fair and reasonable in all the circumstances of this case and I'm not

requiring it to do anything more. As this is the case, it's up to Mr G to decide whether he now wishes to accept HSBC's offer.

My final decision

For the reasons I've explained, I'm satisfied that what HSBC UK Bank Plc has already agreed to do to put things right for Mr G is fair and reasonable in the circumstances of this case. So I'm not requiring it to do anymore.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 3 July 2023.

Caroline Davies
Ombudsman